

**Princess Pastries, Inc., and Princess Pastries, Inc.,  
Debtor-in-Possession and Bakery, Confection-  
ary and Tobacco Workers International Union,  
Local 12, AFL-CIO-CLC. Case 6-CA-16786**

31 July 1984

**ORDER DENYING MOTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

Upon a charge filed by the Union 4 October 1983 and amended 16 November 1983 the General Counsel of the National Labor Relations Board issued a complaint 16 November 1983 against the Company, the Respondent, alleging that it had violated Section 8(a)(1) and (5) of the National Labor Relations Act. The complaint further alleges that Princess Pastries, Inc. has been designated debtor-in-possession by the United States Bankruptcy Court for the Western District of Pennsylvania since about 2 September 1983 and is a successor in bankruptcy to Princess Pastries, Inc. The complaint further alleges that on 2 July 1979 the Union was certified as the exclusive collective-bargaining representative of the appropriate unit and continued to be such representative at all material times. The complaint also alleges that during August and September 1983 the Respondent and the Union met to negotiate wages, hours, and other terms and conditions of employment, but that on 30 September 1983 the Respondent implemented its contract proposals retroactive to 11 September 1983 even though no valid bargaining impasse had been reached. Although properly served with copies of the complaint, the Respondent failed to file an answer.

On 27 February 1984 the General Counsel filed a Motion for Summary Judgment. On 29 February 1984 the Board issued an order transferring this proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations and the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In its recent decision in *NLRB v. Bildisco & Bildisco*, 104 S.Ct. 1188 (1984), the Supreme Court held that "[f]rom the filing of a petition in bankruptcy until formal acceptance, a collective-bargaining agreement is not an enforceable contract within the meaning of NLRB Sec. 8(d)." In applying *Bildisco*, the Board has held in a summary judgment proceeding that an investigation by the Regional Director into the circumstances surrounding the filing of a bankruptcy petition was necessary even though the Respondent failed to file an answer to the complaint alleging a violation of Section 8(a)(1) and (5). *Earle Equipment Co.*, 270 NLRB 827 (1984). In the present case, the General Counsel's motion does not address whether there was a collective-bargaining agreement in effect between the Union and the Respondent, whether or when the Respondent formally accepted the collective-bargaining agreement after the filing of the bankruptcy petition, whether a bankruptcy court permitted rejection of the collective-bargaining agreement, or whether the Respondent's unilateral implementation of its contract proposals was a rejection of an executory contract under the Bankruptcy Code. Accordingly, we conclude that in light of *Bildisco* further investigation by the Regional Director into the circumstances surrounding the bankruptcy petition is necessary. We further conclude that to the extent that this case may involve negotiations for a new contract after the filing of a bankruptcy petition, there are issues presented which are best resolved by a hearing. We therefore shall deny the General Counsel's Motion for Summary Judgment and shall remand the case to the Regional Director.

**ORDER**

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this case be remanded to the Regional Director for Region 6 for further appropriate action consistent herewith.